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17 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,  
23 Plaintiffs,  
24 v.  
25 SAP AG, et al.,  
26 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF JOSHUA L. FUCHS  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS'  
PROPOSED FINAL JUDGMENT**

1 I, Joshua L. Fuchs, declare as follows:

2 (1) I am an associate in the law firm of Jones Day, 717 Texas, Suite 3300, Houston,  
3 Texas 77002, and counsel of record for Defendants SAP AG, SAP America, Inc. (together,  
4 "SAP") and TomorrowNow, Inc. ("TN") (collectively, "Defendants") in the above-captioned  
5 action. I am a member in good standing of the state bar of Texas and admitted pro hac vice in  
6 this matter. I make this declaration based on personal knowledge and, if called upon to do so,  
7 could testify competently thereto.

8 (2) Defendants made available TomorrowNow's support services servers, which  
9 totaled over 45 servers, for Plaintiffs review. From these servers alone, approximately 12.5  
10 terabytes of data was requested and produced.

11 (3) TomorrowNow also had databases including the SAS Database, dotProject,  
12 BakTrak, and Pathfinder which were used to provide support services to its customers. These  
13 databases contain the equivalent of tens of thousands of files.

14 (4) Defendants collected approximately 300 hard drives from TomorrowNow  
15 employees over time.

16 (5) In total, Defendant TomorrowNow produced 10,398,674 bates numbered pages,  
17 not including native files.

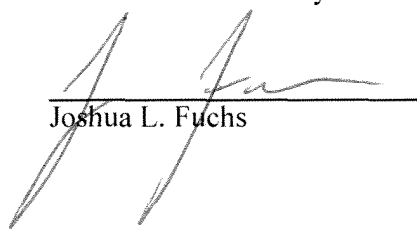
18 (6) All of the materials referenced above would have to be searched and analyzed in  
19 detail to determine which files contain infringing material at issue in this case.

20 (7) Attached as Exhibit A is a true and correct copy of the following excerpts from the  
21 May 20, 2010 deposition transcript of Kevin Mandia: 19:16-20:9.

22 (8) Attached as Exhibit B is a true and correct copy of the following excerpts from the  
23 May 21, 2010 deposition transcript of Kevin Mandia: 416:12-417:19.

24  
25  
26  
27  
28

1 I declare under penalty of perjury under the laws of the United States and the State of  
2 California that the foregoing is true and correct. Executed this 21st day of December, 2010 in  
3 Houston, Texas.

  
\_\_\_\_\_  
Joshua L. Fuchs

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6 HUI-134767v1

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# Exhibit A

KEVIN MANDIA May 20, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation,	)	
ORACLE USA, INC., a	)	
Colorado corporation, and	)	
ORACLE INTERNATIONAL	)	
CORPORATION, a California	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German	)	
corporation, SAP AMERICA,	)	
INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation,	)	
and DOES 1-50, inclusive,	)	
	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF  
KEVIN MANDIA

VOLUME 1; PAGES 1 - 290

THURSDAY, MAY 20, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-427382)

KEVIN MANDIA May 20, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 19

09:30:49 16 Q. Okay. What's the total amount of money  
09:30:56 17 that your company has billed Oracle for for your  
09:31:02 18 services and the services of the employees of your  
09:31:04 19 company as of today?  
09:31:06 20 A. In total?  
09:31:07 21 Q. Yes.  
09:31:09 22 A. I don't have the exact number in front of  
09:31:11 23 me. Would you like an estimate?  
09:31:13 24 Q. Please.  
09:31:35 25 A. I'd like to caveat my answer with, I

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KEVIN MANDIA May 20, 2010  
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Page 20

09:31:37 1 really don't know my margin of error here, and I'm  
09:31:40 2 absolutely speculating.

09:31:45 3 I would estimate in the ballpark of  
09:31:47 4 between 3 million and 4 million dollars.

09:31:50 5 Q. Okay. You think the 3 million is a low  
09:31:58 6 end of your speculation?

09:32:01 7 A. It may be lower.

09:32:02 8 Q. Okay. But it could be higher than 4?

09:32:08 9 A. It could be higher than 4.

18:20:33 1 another call in potentially January of 2010.

18:20:39 2 Q. Okay. This may be the last question of  
18:20:41 3 the day, because Ted's going to shut me down if  
18:20:45 4 it's not.

18:20:47 5 What was the subject matter that you  
18:20:49 6 recall discussing with Ms. Ishiguro? What's her  
18:20:52 7 area of specialty?

18:21:04 8 A. The best I can recollect, we discussed  
18:21:06 9 with her PeopleSoft schema, PeopleSoft databases.

18:21:17 10 MR. COWAN: I think that's all we have for  
18:21:19 11 today. We'll continue your deposition tomorrow  
18:21:22 12 morning, as per the agreement of the parties.

18:21:26 13 THE VIDEO OPERATOR: Going off the record,  
18:21:26 14 the time now is 6:21. This also is the conclusion  
18:21:31 15 of Tape 5.

18:21:32 16 (Time noted, 6:21 p.m.)

18:21:39 17 --o0o--

18:21:39 18 I declare under penalty of perjury that  
18:21:39 19 the foregoing is true and correct. Subscribed at

18:21:39 20 Exton, PA, ~~California~~, this 6 day of  
18:21:39 21 JULY 2010.

18:21:39 22  
18:21:39 23   
18:21:39 24 KEVIN MANDIA

25



## Exhibit B

KEVIN MANDIA May 21, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation,	)	
ORACLE USA, INC., a	)	
Colorado corporation, and	)	
ORACLE INTERNATIONAL	)	
CORPORATION, a California	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German	)	
corporation, SAP AMERICA,	)	
INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation,	)	
and DOES 1-50, inclusive,	)	
	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF  
KEVIN MANDIA

VOLUME 2; PAGES 291 - 570

FRIDAY, MAY 21, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-427384)

KEVIN MANDIA May 21, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 416

13:20:25 12 Q. Are there any particular types of files  
13:20:26 13 that you decompressed from -- that you found on  
13:20:30 14 DCTIBU01?

13:20:54 15 A. I believe -- I'm going to look at my  
13:20:57 16 report and see if it refreshes my recollection.

13:21:00 17 Q. Sure, please do.

13:21:02 18 A. Otherwise, I'll have to speculate.

13:21:04 19 Q. No problem.

13:21:22 20 A. In regards to DCITBU01, because I think  
13:21:27 21 you flipped letters --

13:21:29 22 Q. I think I did.

13:21:36 23 A. Let me -- to give you the most specific  
13:21:38 24 answer, let me find a table.

13:21:51 25 Q. I think it's page 38, paragraph 171 that

KEVIN MANDIA May 21, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 417

13:21:55 1 you're looking for.

13:21:58 2 A. Yes. I wanted to make sure we're talking  
13:22:03 3 about the same thing.

13:22:04 4 Q. All right.

13:22:05 5 A. In regards to Table 13, it's my  
13:22:12 6 understanding what we did on DCITBU01 is used a  
13:22:17 7 computer forensic tool called EnCase to decompress  
13:22:22 8 those archived files that that forensic tool would  
13:22:25 9 recognize. So we didn't decompress everything, but  
13:22:29 10 we did decompress, most likely, zips. Zipped  
13:22:35 11 files.

13:22:36 12 Q. Okay.

13:22:37 13 A. There were also .exe and .par files. As I  
13:22:50 14 sit here today, I would think Mandiant did not  
13:22:54 15 decompress the .par or the .exe files on DCITBU01.

13:23:03 16 Q. So you think the decompression you did was  
13:23:05 17 limited to ZIP files?

13:23:07 18 A. As I sit here today, I believe that is the  
13:23:08 19 case.

KEVIN MANDIA May 21, 2010  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

18:31:07

1

THE VIDEO OPERATOR: This concludes Volume

18:31:08

2

2 in the deposition of Kevin Mandia. We are off

18:31:11

3

the record at 6:31.

4

(Time noted, 6:31 p.m.)

5

--o0o--

6

I declare under penalty of perjury that

7

the foregoing is true and correct. Subscribed at

8

EXTON, PA, ~~California~~, this 6 day of

9

JULY 2010.

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11



12

KEVIN MANDIA

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